

The complaint

Mr W complains about Aviva Insurance Limited's handling of a claim he made on a legal indemnity insurance policy.

What happened

Mr W has owned a property since 2005 and held a policy which provided cover for various perils related to the leasehold and covenants related to the property.

In 2017, Aviva made a payment of £22,500 to Mr W for a claim he made because of a reduction in the value of the property due to issues related to ongoing and unresolved structural issues. A report confirming the reduction in value was proved by a surveyor, Mr B.

In July 2019, Mr W was involved in arbitration relating to the condition of the property. Aviva wasn't a party to these proceedings as they related to matters which weren't covered by the policy.

Mr W contacted Aviva in November 2019 to say that as a result of those proceedings, further information had come to light and so he considered Mr B should be asked to revisit his findings and whether this new information meant that the valuation should be revised.

In February 2020, Aviva told Mr W it agreed Mr B should revisit his valuation. In September 2020, a new surveyor, Mr A, was approached as due to ill health Mr B was unable to complete the requested review. Mr A said the reduction in value would be greater than had previously been estimated and on that basis Aviva offered £3,050 in settlement of the claim.

Mr W rejected this and after further correspondence with Aviva said in May 2021 that he considered Aviva should pay the remaining amount of the £50,000 indemnity limit of the policy. This would enable him to pay off the remaining mortgage, allowing him to surrender his lease and withdraw his defence and counter-claim to possession proceedings relating to the property.

Aviva agreed to this and made a full and final settlement offer to Mr W of £27,500, on the conditions that the lease be surrendered and the policy cover would cease.

Mr W complained to Aviva, and then to our service. He essentially argues that the settlement of the remaining indemnity limit could have been made much sooner and he'd incurred significant, uninsured legal costs, additional mortgage payments and been greatly distressed because of avoidable delays in obtaining the surveyor's report and revised valuation and making the settlement offer. He's also unhappy that Aviva attached conditions to the offer which he felt pressured to accept in order to be able to surrender the property before a deadline related to legal proceedings.

Our investigator hadn't upheld Mr W's complaint and as he didn't agree, the complaint came to me to make a final decision.

After reviewing the information available to me, I considered that the main element of Mr W's

complaint, that he'd incurred significant additional costs due to Aviva's inaction and delay shouldn't be upheld. I did think there had been avoidable delays and Aviva should pay £100 compensation to recognise this. I issued a provisional decision on that basis, giving both parties the opportunity to respond to this by 17 August 2023.

My provisional decision

In my provisional decision, I said:

Where an insurer has made an offer in full and final settlement of a claim, and this has been accepted, we'll rarely comment on the fairness of the offer itself. We can look at how the offer was reached and how it was communicated.

I'm satisfied that Aviva's offer to Mr W in full and final settlement was clear and not misleading. The offer detailed how the amount had been reached, that the £27,500 was the remaining amount of the £50,000 policy indemnity limit with £22,500 having already been paid, and that it was a full and final offer.

I'm also satisfied that the conditions attached to the offer were fair. Aviva said the offer was contingent on Mr W surrendering the leasehold on the property and the policy cover ceasing. From what I can see, it was Mr W who initially suggested the settlement of the remaining indemnity amount to allow him to pay off the mortgage and surrender the leasehold, and so I think it's unsurprising that Aviva made this a condition of the offer. It follows that if Mr W surrendered the leasehold, the policy cover would cease as he no longer had a leasehold which required the various aspects of cover in the policy. In addition, the indemnity limit of the policy had been exhausted, meaning no further payments would be possible so the ending of the policy was inevitable.

Mr W also considers that the full and final offer could, and should, have been made much sooner and that if that had happened he'd have been able to surrender the leasehold of the property earlier and wouldn't have incurred significant expenses in defending legal action and going through mediation processes. He was also unhappy that the offer was made very close to a deadline related to the possession proceedings, which left him little time to consider whether to accept it.

Mr W notified Aviva of the possible need to revisit Mr B's valuation in November 2019. In December 2020 Aviva sent an email to H with Mr W's comments asking for the points he'd raised to be looked into. H had previously dealt with Mr B at the time of the original claim. However, it wasn't Mr W chased this up with Aviva in February 2020 that he received any acknowledgement or update from Aviva. I also haven't seen any evidence of Aviva requesting updates from H about the progress of their enquiries in light of Mr W's comments.

Aviva agreed that Mr B should be asked to review his findings, and to that end asked H to draft a letter to Mr B. It's unclear why that wasn't agreed until February 2020. By the end of March 2020 H confirmed Mr B had been asked to consider reviewing his valuation of Mr W's property and Mr B had said he would need access to the files from his original survey.

The obvious blockage at this point was that, due to the Covid-19 related lockdown in place in March 2020, Mr B was working at home with no access to his office files. Through to August 2020 there was further correspondence involving Aviva, H and Mr W where the issue of Mr B's fee was discussed. I can see that apparently contradicting information was provided by H to Mr W about whether Mr B had provided his quote, with it being suggested that this had been provided to Aviva for approval, but then later saying that the quote hadn't been received.

Unfortunately, Mr H became unwell in September 2020 and so was unable to carry out the further work. Mr A was then appointed, and provided his valuation in January 2021. He said that the property was worth between £10,000 and £15,000 less than Mr B had estimated.

Aviva took the view that a further settlement for the reduction in value was appropriate, and offered £3,050. This was because it said the mid-point of the additional reduction was £12,500 but Mr W had received a settlement of £9,450 from another insurer in respect of a separate policy.

Mr W disputed the valuation change and also Aviva's settlement offer. H had further contact with Mr A in light of the points raised by Mr W. In May 2021 Mr A revised his opinion and said that because of the ongoing legal proceedings and condition, the property had no value.

Mr W outlined his view that Aviva should pay the remaining indemnity amount which would allow him to pay off the mortgage and surrender the leasehold Aviva agreed with this, but only a matter of hours before Mr W had to make a decision regarding mediation and possible legal action.

My summary above isn't intended to set out every contact between Mr W, Aviva, H, Mr B and Mr A, or go into detail of the various issues, valuations and events relating to Mr W's property. I've given a summary of the key events and dates in order to explain my findings on this point.

The first point I will deal with briefly is to acknowledge that Aviva's offer was made shortly before the deadline Mr W had informed it of related to the possession proceedings. Without the offer, Mr W indicated he'd have to continue with his defence of the proceedings which would potentially leave him liable for additional costs.

The amount being offered, was in line with what Mr W was seeking, and in any case fully discharged Aviva of its obligations on the policy by paying the remaining indemnity amount. The simple fact was that Aviva's offer was broadly in line with what Mr W had requested and wouldn't have been revised upwards as there were no funds remaining in the indemnity limit.

I think it has to be accepted there were delays in obtaining the review of the original valuation. I can't hold Aviva responsible for all of these however. I can't say that delays caused by the Covid-19 lockdowns, or Mr B's ill health, which required the appointment and instruction of Mr A, were something Aviva could have prevented or mitigated.

However, it seems to me that there were avoidable delays during the course of Mr W's claim, particularly between November 2019 and February 2020. Mr W had emailed Aviva to outline his position but this wasn't acknowledged by Aviva until he chased again in February 2020. Aviva had taken action by sending Mr W's comments to H and asking for this to be looked into. I haven't seen any evidence of the actions taken by H in that period, or more significantly for my decision, evidence of Aviva chasing this up with H in order to progress matters and respond to Mr W.

While the jurisdiction of our service doesn't extend to cover the conduct of H, I do think that Aviva's contact with H in order to progress Mr W's claim was below the required standard and that this potentially caused further delays. After agreeing to ask Mr B to revisit the valuation, there was a further delay around agreeing Mr B's fee, with conflicting information being received about whether Aviva had been provided with a quote for the work. I can see that Mr W was in contact with Aviva on this point but there appears to have been little chasing or contact with H to clarify and resolve this.

The impact of this delay was, however, fairly minor in my view. It seems that the main

obstacle to Mr B completing his review was his lack of access to the files and then his ill health, neither of which I can attribute to any failure on Aviva's part.

There is, however, an argument to be made that the initial delay I've highlighted did impact on whether it was possible to obtain a report from Mr B. If Aviva or H had contacted Mr B shortly after Mr W contacted it in November 2020, it may have been possible for Mr B to complete his report before the Covid-19 lockdown in March 2020, or at least the files which were held at Mr B's office would have been removed before the lockdown or not required in order to complete the report. If that had been the case, then Mr A wouldn't have been involved, provided Mr B had been able to complete his report and any follow up work before he fell ill in September 2021.

I'm aware that while Mr A was appointed in September 2020, his report wasn't completed until January 2021. I've considered whether this should be considered as indicative of how long it would have taken Mr B to provide his report if he'd been appointed soon after Mr W contacted Aviva in November 2019. I don't think I can, for two reasons. The first is that Mr A was required to review the matter in full, rather than Mr B's intended course of action which would have relied on a review of his initial findings and the new information. I'm also aware that restrictions around social distancing and meeting existed in the period between September 2020 and January 2021 which would potentially have impacted on Mr A's ability to complete his report. I note particularly that on visiting the property he was unable to view the interior on his first visit as the resident was isolating.

I have to consider that while it was possible Mr B's report would have been completed without the need to refer to Mr A, I do need to acknowledge that this can't be stated definitively. However, even if Mr B had completed his report before September 2021 and his becoming unwell, without the involvement of Mr A, I don't think this would have resulted in Aviva making a full and final settlement for the remaining indemnity amounts at that time, or earlier than May 2021. For that reason, I don't need to make a finding of whether I think Mr B's report would have been completed before September 2021, or when it would have been completed as it doesn't affect the outcome. I'll explain why this is the case.

At this point it's important to acknowledge that there are a number of additional unknowns which it would be unwise to apply hindsight to seek to answer. The most significant is that while Mr A concluded that the valuation of the property had decreased by more than Mr B had originally concluded, I can't say what conclusion Mr B would have reached. He may have concluded his original valuation was correct. In order to reach further conclusions however, I've had to assume he'd have come to the same conclusion as Mr A.

The next step Aviva would have taken on receipt of a report from Mr B would have been the same as it did after receiving Mr A's report – making a settlement offer to Mr W. That offer, if Mr B had been able to complete a report which concluded the same as Mr A, would have been for £3,050, the same amount as it originally offered in February 2021.

I think it's fair to say that Mr W would have rejected that offer for the same reasons he did in February 2021. He said that the amount paid by the other insurer should be excluded from the settlement as that was intended to cover other costs, unrelated to the decrease in value of the property. He also disagreed with the methodology and reasoning behind Mr A's conclusions.

The critical element is whether, following further correspondence, Aviva would have made a full and final settlement offer on the same terms it did in May 2021. I can't conclude it would have. It seems to me that the full and final settlement offer was made after Mr W indicated that this amount would allow him to surrender the leasehold and thereby prevent further claims. That seems to have followed other legal and mediation proceedings. I don't think I

can say Mr W would have indicated his desire to surrender the leasehold if the report had been completed in early 2020.

I understand that possession proceedings, which seem to be a significant factor in Mr W's decision to surrender the leasehold started in March 2020, but Mr W didn't suggest surrendering the property, or having a settlement totalling the indemnity limit, until 2021. I can see that after Mr A provided his report, Mr W did say the other party in the possession proceedings had suggested he forfeit possession and ask his lender to write off the mortgage but Mr W didn't consider this to be a realistic proposal. He didn't at that point suggest the payment of the indemnity limit in order to pay off the mortgage and to then surrender the leasehold. I think this is a significant point in considering that an earlier report wouldn't have made a material difference in Aviva's approach to the claim – as the decision to do this followed Mr W's suggestion which wasn't made until May 2021.

Aviva's said it took a business decision to make the full and final settlement. I can see that the offer followed further information from Mr A in May 2021 where he said the property effectively no market value, but this was linked by Mr A to the ongoing legal proceedings. I don't think that a report completed prior to March 2020 would have reached the same conclusion, as at that point the possession proceedings hadn't started. I can't say whether a report completed between the start of the possession proceedings and Mr B's ill health would have concluded this as it would have relied on the nature and stage of the proceedings, Mr B's findings and any other relevant factors. I'm not qualified to make such a determination.

I don't think I can conclude that if the report had been prepared before September 2020, then Aviva could or should have made the full and final settlement offer to pay the remaining policy indemnity. If Mr B had reported back and Aviva made a settlement, there would have been funds remaining from the indemnity limit, and depending on what happened further claims around the value of the property could have been submitted. That may have resulted in settlements totalling the indemnity limit. However, the legal costs incurred by Mr W weren't something covered by the policy and wouldn't have been in the event of further claims being made. I'm not satisfied I can conclude that Mr W incurred additional costs due to Aviva's handling of the claim.

On balance, I don't think a full and final settlement offer would have been made by Aviva earlier even if Mr B had made a report. Mr W hadn't indicated his desire to be paid the remaining indemnity amount and surrender the leasehold before May 2021, so I have to take this as the earliest date that he'd have suggested this. The suggestion that Mr W made additional mortgage payments due to Aviva's delay isn't supported by my findings, as I don't think there's enough to indicate Aviva would have made a full and final settlement which would have allowed Mr B to surrender the property before May 2021.

While I'm unable to conclude that additional costs Mr W incurred between March 2020 and May 2021 can be attributed to Aviva, I do think that the lack of communication or obvious progression of the claim beyond asking H to look into Mr W's comments between November 2019 and March 2020 should be recognised.

While Aviva had made H aware of Mr W's comments, it didn't follow this up or tell Mr W what was happening. I can understand that he'd have been frustrated about the lack of contact or action on Aviva's part. I do note however that there was also minimal contact from Mr W in this period to chase Aviva so the distress caused to him by this delay would seem to be relatively minor. I therefore believe that Aviva should pay Mr W £100 compensation to recognise this.

The responses to my provisional decision

Neither Mr W or Aviva responded to my provisional decision to indicate whether they agreed or disagreed with my opinion, or to request additional time to respond.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although neither party has responded to my provisional decision, and so therefore no additional points or evidence has been provided that I need to consider or address, I have reviewed my findings again. I remain satisfied with the conclusions I reached, for the same reasons I previously outlined and have repeated above.

My final decision

It's my final decision to uphold Mr W's complaint in part. In order to put things right, Aviva Insurance Limited must pay £100 compensation to Mr W. Aviva Insurance Limited must pay this amount within 28 days of us telling it Mr W accepts our decision. If it does not, it must pay simple interest at a rate of 8% on this amount from that date to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 September 2023.

Ben Williams
Ombudsman